

AMENDED IN SENATE MAY 15, 2001

SENATE BILL

No. 542

Introduced by Senator Ortiz

February 22, 2001

An act to amend Sections 7000, 7001, 7002, 7003, 7005, 7007, 7010, 7010.5, 7010.7, 7012, 7013, 7014, 7016, 7021, 7025, 7054.6, 7104.1, 7109, 7116, 8100, 8300, 8571, and 8650 of, to amend the heading of Chapter 1 (commencing with Section 8100) of Part 1 of Division 8 of, and to repeal Sections 7017, 7054.5, 8113.2, 8301, 8302, 8303, 8304, 8305, 8306, 8307, and 8308 of, the Health and Safety Code, relating to cemeteries.

LEGISLATIVE COUNSEL'S DIGEST

SB 542, as amended, Ortiz. Cemeteries.

Existing law regulates the business of cemeteries and defines key terminology used in the cemetery business.

This bill would make changes to the definitions used in the cemetery business in that it clarifies, amends, and eliminates various definitions.

This bill would combine the statutes, which provided for a cemetery authority's power to regulate the use, care, control, management, restriction, and protections of the cemetery land into one statutory section and repeal other sections that duplicate the powers of the cemetery authority.

This bill would create an inalienable property right in a cemetery plot that has been conveyed by deed or certificate of ownership as a family plot and would prohibit the sale of any occupied portion of the family plot.

This bill would further allow an heir to a family plot, where human remains are contained in a portion of the family plot, to make the

unoccupied portion of the plot available for sale as a property interest and precludes the plot from becoming inalienable by virtue of operation of law.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7000 of the Health and Safety Code is
2 amended to read:

3 7000. The definitions in this chapter apply to this division and
4 to Division 8 (commencing with Section 8100).

5 SEC. 2. Section 7001 of the Health and Safety Code is
6 amended to read:

7 7001. “Human remains” or “remains” means the body ~~or a~~
8 ~~part of the body~~ of a deceased person, regardless of its stage of
9 decomposition, and cremated remains.

10 SEC. 3. Section 7002 of the Health and Safety Code is
11 amended to read:

12 7002. “Cremated remains” means the material that is left
13 after cremation in a crematory of a body or a part of a body of a
14 deceased person.

15 SEC. 4. Section 7003 of the Health and Safety Code is
16 amended to read:

17 7003. (a) A “cemetery” means both a place used, or intended
18 to be used, and dedicated, for cemetery purposes, and is limited to
19 any one, or a combination of more than one, of the following:

20 (1) A burial park, for earth interments.

21 (2) A mausoleum, for crypt or vault interments.

22 (3) A crematory, or a crematory and columbarium, for cinerary
23 interments.

24 (b) A place where six or more human bodies are buried.

25 SEC. 5. Section 7005 of the Health and Safety Code is
26 amended to read:

27 7005. Except in Part 5 (commencing with Section 9501) of
28 Division 8, “mausoleum” means a structure or building for the
29 entombment of human remains in crypts or vaults in a place used,
30 or intended to be used, and dedicated, for cemetery purposes.

31 SEC. 6. Section 7007 of the Health and Safety Code is
32 amended to read:

1 7007. Except in Part 5 (commencing with Section 9501) of
2 Division 8, “columbarium” means a structure, room, or other
3 space in a building or structure containing niches for inurnment of
4 cremated human remains in a place used, or intended to be used,
5 and dedicated, for cemetery purposes.

6 SEC. 7. Section 7010 of the Health and Safety Code is
7 amended to read:

8 7010. “Cremation” means the process by which the
9 following three steps are taken:

10 (a) The reduction of the body of a deceased human to its
11 essential elements by incineration.

12 (b) The repositioning or moving of the body or remains during
13 incineration to facilitate the process.

14 (c) The processing of the remains after removal from the
15 cremation chamber pursuant to Section 7010.3.

16 SEC. 8. Section 7010.5 of the Health and Safety Code is
17 amended to read:

18 7010.5. “Residue” means human ashes, bone fragments,
19 prostheses, and disintegrated material from the chamber itself,
20 imbedded in cracks and uneven spaces of a cremation chamber,
21 that cannot be removed through reasonable manual contact with
22 sweeping or scraping equipment. Material left in the cremation
23 chamber, after the completion of a cremation, that can be
24 reasonably removed shall not be considered “residue.”

25 SEC. 9. Section 7010.7 of the Health and Safety Code is
26 amended to read:

27 7010.7. “Scattering” means the authorized dispersal of
28 cremated remains at sea, in other areas of the state, or commingling
29 in a defined area within a dedicated cemetery, in accordance with
30 this part.

31 SEC. 10. Section 7012 of the Health and Safety Code is
32 amended to read:

33 7012. “Entombment” means the process of placing human
34 remains in a crypt or vault.

35 SEC. 11. Section 7013 of the Health and Safety Code is
36 amended to read:

37 7013. “Burial” means the process of placing human remains
38 in a grave.

39 SEC. 12. Section 7014 of the Health and Safety Code is
40 amended to read:

1 7014. “Grave” means a space of earth in a burial park, used,
2 *or intended to be used*, for the ~~permanent~~ disposition of human
3 remains.

4 SEC. 13. Section 7016 of the Health and Safety Code is
5 amended to read:

6 7016. “Niche” means a space in a columbarium used, or
7 intended to be used, for the placement of cremated human remains.

8 SEC. 14. Section 7017 of the Health and Safety Code is
9 repealed.

10 SEC. 15. Section 7021 of the Health and Safety Code is
11 amended to read:

12 7021. “Directors” or “governing body” means the board of
13 directors, board of trustees, or other policymaking body of a
14 cemetery association.

15 SEC. 16. Section 7025 of the Health and Safety Code is
16 amended to read:

17 7025. “Disposition” means the final arrangements made for
18 human remains within California, or the shipment outside of
19 California, for lawful final arrangements or scattering elsewhere,
20 including release of remains pursuant to Section 103060.

21 SEC. 17. Section 7054.5 of the Health and Safety Code is
22 repealed.

23 SEC. 18. Section 7054.6 of the Health and Safety Code is
24 amended to read:

25 7054.6. (a) Cremated remains may be removed in a durable
26 container from the place of cremation or interment and kept in the
27 dwelling owned or occupied by the person having the right to
28 control disposition of the remains under Section 7100, or the
29 durable container holding the cremated remains may be kept in a
30 church or religious shrine, if written permission of the church or
31 religious shrine is obtained and there is no conflict with local use
32 permit requirements or zoning laws, if the removal is under the
33 authority of a permit for disposition granted under Section
34 103060. The placement, in any place, of six or more cremated
35 remains under this section does not constitute the place a cemetery,
36 as defined in Section 7003.

37 (b) Prior to disposition of cremated remains, every licensee or
38 registrant pursuant to Chapter 12 (commencing with Section
39 7600) or Chapter 19 (commencing with Section 9600) of Division
40 3 of the Business and Professions Code, and the agents and

employees of the licensee or registrant, shall do all of the following:

(1) Remove the cremated remains from the place of cremation in a durable container.

(2) Keep the cremated remains in a durable container.

(3) Store the cremated remains in a place free from exposure to the elements.

(4) Responsibly maintain the cremated remains.

SEC. 19. Section 7104.1 of the Health and Safety Code is amended to read:

7104.1. If, within 30 days after the coroner notifies or diligently attempts to notify the person responsible for the interment of a decedent's remains which are in the possession of the coroner, the person fails, refuses, or neglects to inter the remains, the coroner may inter the remains. The coroner may recover any expenses of the interment from the responsible person.

SEC. 20. Section 7109 of the Health and Safety Code is amended to read:

7109. The court shall allow costs and reasonable attorney's fees to a prevailing plaintiff against all defendants, other than the coroner.

SEC. 21. Section 7116 of the Health and Safety Code is amended to read:

7116. Cremated remains may be scattered or placed in areas where no local prohibition exists, provided that the cremated remains are not distinguishable to the public, are not in a container, and that the person who has control over disposition of the cremated remains has obtained written permission of the property owner or governing agency to scatter on the property. A state or local agency may adopt an ordinance, regulation, or policy, as appropriate, authorizing, consistent with this section, or specifically prohibiting, the scattering of cremated human remains on lands under the agency's jurisdiction. The placement or scattering of the cremated remains of more than one person in one location pursuant to this section shall not create a cemetery pursuant to Section 7003 or any other provision of law.

SEC. 22. The heading of Chapter 1 (commencing with Section 8100) of Part 1 of Division 8 of the Health and Safety Code is amended to read:

CHAPTER 1. DEFINITIONS

SEC. 23. Section 8100 of the Health and Safety Code is amended to read:

8100. The definitions set forth in Chapter 1 (commencing with Section 7000) of Part 1 of Division 7 shall be applicable to this division.

SEC. 24. Section 8113.2 of the Health and Safety Code is repealed.

SEC. 25. Section 8300 of the Health and Safety Code is amended to read:

8300. (a) A cemetery authority may make, adopt, amend, add to, revise, or modify, and enforce rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery and for the other purposes specified in this article.

(b) The cemetery authority's power includes, but is not limited to, the following:

(1) Restricting and limiting the use of all property within its cemetery.

(2) Regulating the uniformity, class, and kind of all markers, monuments, and other structures within the cemetery and its subdivisions, but shall not require, as a condition to the erection of a marker, monument, or other structure within the cemetery, that the marker, monument, or other structure be purchased from or through the cemetery authority.

(3) Prohibiting the erection of monuments, markers, or other structures in or upon any portion of the cemetery.

(4) Regulating or prohibiting monuments, effigies, and structures within any portion of the cemetery and provide for their removal.

(5) Regulating or preventing the introduction or care of plants or shrubs within the cemetery.

(6) Preventing interment in any part of the cemetery of human remains not entitled to interment and preventing the use of interment plots for purposes violative of its restrictions or rules and regulations.

(7) Regulating the conduct of persons and preventing improper assemblages in the cemetery.

(8) Making and enforcing rules and regulations for all other purposes deemed necessary by the cemetery authority for the proper conduct of the business of the cemetery, for the transfer of any plot or the right of interment, and the protection and safeguarding of the premises, and the principles, plans, and ideals on which the cemetery is conducted.

SEC. 26. Section 8301 of the Health and Safety Code is repealed.

SEC. 27. Section 8302 of the Health and Safety Code is repealed.

SEC. 28. Section 8303 of the Health and Safety Code is repealed.

SEC. 29. Section 8304 of the Health and Safety Code is repealed.

SEC. 30. Section 8305 of the Health and Safety Code is repealed.

SEC. 31. Section 8306 of the Health and Safety Code is repealed.

SEC. 32. Section 8307 of the Health and Safety Code is repealed.

SEC. 33. Section 8308 of the Health and Safety Code is repealed.

SEC. 34. Section 8571 of the Health and Safety Code is amended to read:

8571. (a) All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the cemetery authority, or as provided by law.

(b) A plot, the use of which has been conveyed by deed or certificate of ownership as a family plot, thereby becomes inalienable and shall be held as a family plot of the owner.

SEC. 35. Section 8650 of the Health and Safety Code is amended to read:

8650. (a) Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner and the owner dies without making disposition of the plot either in his *or her* will by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, any grave, crypt,

1 vault, or niche in which remains have been interred thereby
2 becomes inalienable and shall be held as the family plot of the
3 owner.

4 (b) As of January 1, 2002, an unoccupied grave, crypt, vault,
5 or niche which, solely by virtue of this section, was inalienable
6 shall become alienable.

